

**H.B., Appellant**

**U.S. POSTAL SERVICE, WESTCHESTER  
COUNTY PROCESSING & DISTRIBUTION  
CENTER, White Plains, NY, Employer**

*Appearances:*

*Alan J. Shapiro, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

### Case Submitted on the Record

Before:

**JURISDICTION**

On July 1, 2020 appellant, through counsel, filed a timely appeal from a February 7, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted July 3, 2019 employment incident.

## **FACTUAL HISTORY**

On July 5, 2019 appellant, then a 42-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on July 3, 2019 he sustained neck, shoulder, and back injuries as the result of a motor vehicle accident while in the performance of duty.

In a July 16, 2019 development letter, OWCP informed appellant that the only evidence received in support of his traumatic injury claim was his pay rate information and a position description. It informed him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received an emergency room work/school excuse note dated July 5, 2019 from a physician assistant indicating that appellant had been seen and treated in the emergency room on July 3, 2019. It also received a July 11, 2019 note from Dr. Cynthia E. Meyers, a Board-certified internist, indicating that appellant had an appointment that day and a July 12, 2019 note from Dr. Nicolas El-Khoury, a Board-certified physiatrist, requesting appellant be excused from work for the period July 12 through August 9, 2019.

In a letter dated July 24, 2019, the employing establishment controverted appellant's claim, asserting that he had not established an injury. A July 3, 2019 accident report was also submitted.

In a July 12, 2019 report, Dr. El-Khoury related that appellant was seen for low back, neck, left shoulder, and right shoulder pain. Under history of illness, he noted that on July 3, 2019 the employing establishment motor vehicle that appellant was driving was hit on the side by another vehicle. Physical examination findings listed included cervical, lumbar, and bilateral shoulder tenderness. Dr. El-Khoury diagnosed cervical and lumbar spine myofascial pain syndrome and bilateral shoulder, cervical, and lumbar pain, which he attributed to the accepted July 3, 2019 employment incident.

In an August 9, 2019 disability note, Dr. Thomas S. Mathew, a Board-certified physiatrist, reported that appellant was disabled from work for the period August 9 through 16, 2019.

By decision dated August 20, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosis causally related to the accepted July 3, 2019 employment incident.

On August 28 and September 17, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. In support of his request, appellant submitted an August 16, 2019 report by Dr. El-Khoury. Dr. El-Khoury reiterated the examination findings, pain complaints, and injury history noted in his July 12, 2019 report and diagnosed cervical and lumbar myofascial pain syndrome and bilateral shoulder pain with possible internal derangement. He opined that there was a direct causation between the accepted July 3, 2019 employment incident and appellant's diagnosed conditions.

A telephonic hearing was held on January 6, 2020. By decision dated February 7, 2020, the hearing representative affirmed OWCP's August 20, 2019 decision as modified to find that the medical evidence of record was sufficient to establish a diagnosed medical condition. The claim remained denied, however, as the medical evidence of record was insufficient to establish a diagnosed medical condition based on objective findings causally related to the accepted July 3, 2019 employment incident. Thus, OWCP's hearing representative found that appellant failed to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is causal relationship between a diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.<sup>9</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale,

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<sup>3</sup> *Id.*

<sup>4</sup> *C.D.*, Docket No. 20-0762 (issued January 13, 2021); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *K.G.*, Docket No. 20-1242 (issued January 13, 2021); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *C.D.*, *supra* note 4; *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *K.G.*, *supra* note 5; *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *C.D.*, *supra* note 4; *T.H.*, 59 ECAB 388, 393-94 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *K.G.*, *supra* note 5; *M.V.*, Docket No. 18-0884 (issued December 28, 2018)

explaining the nature of the relationship between the diagnosed condition and the specific employment incident.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted July 3, 2019 employment incident.

In support of his claim, appellant provided reports dated July 12 and 16, 2019 by Dr. El-Khoury, diagnosing cervical and lumbar myofascial pain syndrome and bilateral shoulder pain with possible internal derangement due to the accepted July 3, 2019 employment incident. The Board has held that pain is a symptom, not a firm diagnosis.<sup>11</sup> While Dr. El-Khoury provided an affirmative opinion that supported causal relationship, he did not offer a rationalized medical explanation to support his opinion. Medical evidence that provides a conclusion without a rationalized medical explanation regarding the cause of an employee's condition, is of limited probative value on the issue of causal relationship.<sup>12</sup> Thus, these reports are insufficient to meet appellant's burden of proof.

The record also contains a July 11, 2019 note from Dr. Meyers, indicating that appellant had an appointment that day; and a July 12, 2019 note by Dr. El-Khoury, requesting that appellant be excused from work for the period July 12 through August 9, 2019. The Board has held, however, that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>13</sup> These reports, therefore, are insufficient to establish appellant's claim.

Appellant also submitted a July 5, 2019 work/school excuse note by a physician assistant, noting that appellant had been seen in the emergency room on July 3, 2019. The Board has held, however, that certain healthcare providers such as physician assistants are not considered physicians as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>14</sup> Thus, this evidence is of no probative value and is also insufficient to establish appellant's claim.

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<sup>10</sup> *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>11</sup> *T.H.*, Docket No. 19-1891 (issued April 3, 2020); *M.V.*, Docket No. 18-0884 (issued December 28, 2018). *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

<sup>12</sup> *A.H.*, Docket No. 18-1632 (issued June 1, 2020).

<sup>13</sup> *See E.P.*, Docket No. 20-0389 (issued November 2, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(a)(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *K.G.*, *supra* note 5; *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (a physician assistant is not considered a physician as defined under FECA).

As appellant has not submitted rationalized medical evidence sufficient to establish a diagnosed medical condition causally related to his accepted July 3, 2019 employment incident, the Board finds that he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted July 3, 2019 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board